

Mandatory Mediation in Matrimonial Disputes: Bridging Judicial Encouragement and Legislative Gaps in India

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Abstract

Matrimonial disputes in India increasingly contribute to prolonged litigation, emotional distress, and institutional pressure on family courts. Although mediation is widely acknowledged as a constructive and humane method for resolving family conflicts, its application in India largely depends on judicial discretion rather than a clear legislative mandate. Statutes such as the Family Courts Act, 1984 and Section 89 of the Code of Civil Procedure encourage settlement through mediation, yet the absence of a structured compulsory framework has resulted in inconsistent referrals and underutilization of mediation in matrimonial matters. This paper critically examines the transition from judicial encouragement to legislative design in the context of mandatory mediation for matrimonial disputes in India. It analyses how Indian courts, particularly the Supreme Court and High Courts, have repeatedly emphasized the need for early intervention, counselling, and mediation to prevent escalation of marital conflicts. Judicial directions in cases relating to divorce, child custody, and maintenance reflect a growing recognition that adversarial litigation often aggravates family breakdown rather than resolving it. Despite this, legislative reforms have not fully translated judicial intent into a binding mediation framework. The study adopts a doctrinal and policy-oriented approach, drawing upon judicial precedents, statutory provisions, and comparative experiences from jurisdictions where mandatory mediation has been systematically implemented. It evaluates the scope for introducing a calibrated model of mandatory mediation in India that preserves party autonomy while ensuring early dispute resolution. Special attention is given to identifying categories of matrimonial disputes suitable for compulsory mediation and those that must remain excluded, such as cases involving domestic

violence, coercion, or serious criminal allegations. The paper argues that a carefully designed legislative framework for mandatory mediation can bridge the existing gap between judicial vision and statutory implementation. Such a framework can reduce court congestion, promote amicable settlements, and protect familial relationships, provided it incorporates safeguards, screening mechanisms, and professional mediation standards. The study concludes that moving from discretionary mediation to a structured legislative model is not only viable but necessary to strengthen India's family justice system and ensure more effective, compassionate, and timely resolution of matrimonial disputes.

Keywords: Mandatory Mediation. Pre-Litigation Mediation, Matrimonial Disputes, Alternate Dispute Resolution, Family Dispute Resolution, Family Law.

1. Introduction

Matrimonial disputes in India have increased steadily over the past few decades, reflecting social change, urbanization, economic mobility, and shifting expectations within marriage. Greater awareness of legal rights, particularly among women, has led to a rise in claims relating to divorce, maintenance, child custody, and protection from cruelty. At the same time, marital breakdown often results in multiple parallel proceedings, including civil petitions, criminal complaints, maintenance applications, and custody disputes. This multiplicity of litigation places emotional and financial strain on families and adds to the growing burden on family courts.

The Family Courts Act, 1984 was enacted to create a specialized and sensitive forum for resolving family disputes.¹ It recognized that matrimonial conflicts differ from ordinary civil disputes. Unlike commercial litigation, family disputes are relational and continuing in nature. Even after dissolution of marriage, parties may remain connected as co-parents. However, the adversarial model of litigation, which emphasizes proof, fault, and legal entitlement, may intensify hostility rather than resolve it. Court processes can be formal, time-consuming, and emotionally draining, particularly in disputes involving children.

Empirical research in India strongly supports mediation as a more suitable mechanism for matrimonial conflict resolution. A study conducted in Maharashtra found that reconciliation,

¹ Family Courts Act, 1984 (India).

counselling, and mediation within Family Courts significantly contribute to speedy and meaningful justice (Kurane, 2021).² A socio-legal study of the Visakhapatnam Family Court observed that although matrimonial disputes increasingly enter adversarial litigation, courts actively promote mediation and counselling to preserve family harmony (Lakshmi, 2018).³ Evidence from Family Dispute Resolution Clinics indicates that early-stage mediation, particularly before escalation into criminal proceedings, can resolve nearly ninety percent of family disputes, thereby reducing emotional trauma and judicial burden (Gautam, Kulshrestha, & Goswami, 2021).⁴ A large-scale evaluation of court-connected mediation centres across major Indian cities reported high settlement rates in matrimonial matters, especially in divorce cases (Kumar et al., 2016).⁵ Scholarly analysis further confirms that mediation addresses the emotional and relational dimensions of marital conflict more effectively than adversarial litigation (Kapoor, 2025).⁶ Judicial discourse reflects similar concerns. The Supreme Court has repeatedly encouraged mediation and early intervention in matrimonial disputes, observing that prolonged litigation deepens hostility and harms children.⁷ Statutory provisions also demonstrate a policy preference for settlement. Section 9 of the Family Courts Act mandates courts to make efforts toward reconciliation,⁸ and Section 89 of the Code of Civil Procedure empowers courts to refer disputes to alternative dispute resolution mechanisms, including mediation.⁹ The Mediation Act, 2023 further strengthens the institutional basis of mediation and recognizes pre-litigation processes.¹⁰ Despite these developments, mediation in matrimonial disputes remains largely discretionary. There is no structured statutory framework that makes mediation a mandatory first step in clearly

² Kurane, A. D. (2021). Study of alternative dispute resolution approach towards family dispute settlement with special reference to the state of Maharashtra

³ Lakshmi, N. B. (2018). Matrimonial dispute resolution in India through alternative dispute resolution methods: A socio-legal study with reference to the Visakhapatnam Family Court

⁴ Gautam, R., Kulshrestha, P., & Goswami, A. K. (2021). Mediation and family dispute resolution mechanism: A case study on clinical legal education. *Elementary Education Online*, 20(1), 2490–2496.

⁵ Kumar, A. P., et al. (2016). Strengthening mediation in India: A report on court-connected mediations. Vidhi Centre for Legal Policy.

⁶ Kapoor, S. (2025). Beyond courtrooms: A comparative study of mediation and litigation in matrimonial dispute resolution. *International Journal of Dispute Resolution*, 1(4), 1–74.

⁷ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226 (India).

⁸ Family Courts Act, 1984, § 9 (India).

⁹ Code of Civil Procedure, 1908, § 89 (India).

¹⁰ Mediation Act, 2023 (India).

defined categories of matrimonial disputes. In contrast, Section 12A of the Commercial Courts Act, 2015 introduced mandatory pre-institution mediation for specified commercial disputes, and the Supreme Court affirmed its binding nature in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022).¹¹ This contrast raises an important policy question: why do matrimonial disputes, which involve dignity, child welfare, and long-term social consequences, continue to rely primarily on discretionary referrals?

This paper addresses the gap between judicial encouragement and legislative design. It examines whether a carefully structured, process-based model of mandatory mediation can be introduced in matrimonial disputes without compromising safety, autonomy, or access to justice. The central premise is that mediation is not merely an alternative procedure but a substantive tool for reducing hostility, protecting child welfare, and promoting dignified resolution. Designing a legislative framework that institutionalizes early mediation while safeguarding vulnerable parties is therefore essential for strengthening India's family justice system.

2. Conceptual Foundations of Mediation in Matrimonial Disputes

A. Nature of Matrimonial Disputes

Matrimonial disputes are fundamentally different from ordinary civil disputes. Commercial or property disputes usually concern defined legal rights and financial claims. In contrast, matrimonial conflicts arise out of intimate personal relationships. Marriage is not only a legal bond but also a social and emotional institution. When it breaks down, the dispute often involves emotional hurt, communication failure, financial anxiety, and concerns about children, rather than a single legal violation.

In India, matrimonial litigation may include divorce, judicial separation, restitution of conjugal rights, maintenance, child custody, and sometimes criminal proceedings such as complaints under Section 498-A of the Indian Penal Code.¹² These proceedings are often interconnected. A single marital breakdown may lead to multiple cases in different courts. The dispute therefore becomes multi-layered, combining legal, psychological, and social dimensions.

A key feature of matrimonial disputes is that the relationship between the parties usually continues in some form, especially when children are involved. Even after divorce, parents must coordinate

¹¹ *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

¹² Indian Penal Code, 1860, § 498-A (India).

regarding custody, education, health care, and financial support. Adversarial litigation often increases hostility. While a court decree may settle legal rights, it rarely restores communication or reduces long-term conflict. This continuing relational element makes matrimonial disputes particularly suitable for processes that encourage dialogue rather than confrontation.

B. Why Mediation Is Suited to Family Conflicts

Mediation is a structured process in which a neutral third party facilitates communication to help parties reach a voluntary settlement. Unlike a judge, a mediator does not impose a decision. The focus is on discussion, understanding interests, and exploring mutually acceptable solutions.

Mediation is well suited to matrimonial disputes for several reasons.

First, it prioritizes communication. Many marital conflicts arise from misunderstanding or emotional breakdown. Mediation provides a controlled setting where parties can express concerns without the rigidity of courtroom procedure. This often reduces emotional intensity.

Second, mediation is interest-based rather than fault-based. Litigation usually focuses on proving cruelty, desertion, or misconduct. This may encourage adversarial exaggeration. Mediation shifts attention to practical concerns such as financial stability and parenting arrangements.

Third, mediation allows flexible outcomes. Courts are limited by statutory remedies. A mediated settlement can include detailed parenting plans, structured maintenance arrangements, or phased separation terms tailored to the family's needs.

Fourth, mediation offers confidentiality. Matrimonial disputes involve personal matters. Although family court proceedings may be held in camera, they remain part of judicial records. Mediation provides a more private environment.

Finally, mediation reflects the policy orientation of Indian family law. The Family Courts Act, 1984 requires courts to make efforts toward settlement before proceeding with trial.¹³ This statutory emphasis shows legislative recognition that family disputes require conciliatory approaches.

C. Forms of Mediation: Voluntary, Court-Referred, and Mandatory

In India, mediation in matrimonial disputes takes different forms.

¹³ Family Courts Act, 1984, § 9 (India).

Voluntary mediation occurs when parties themselves agree to mediate, either before or during litigation.

Court-referred mediation takes place when a judge refers the dispute to mediation under statutory authority. Section 89 of the Code of Civil Procedure, 1908 empowers courts to refer civil disputes to alternative dispute resolution mechanisms, including mediation.¹⁴ Such referral depends on judicial discretion.

Mandatory mediation refers to a statutory requirement that parties attempt mediation before proceeding with litigation, at least in specified categories of disputes. Importantly, this obligation concerns participation in the process, not compulsion to settle. Parties must attend mediation, but they remain free to decline settlement and seek adjudication.

This distinction is crucial. Mandatory mediation does not mean mandatory reconciliation. It simply structures the sequence of dispute resolution by introducing dialogue before adversarial trial.

D. Meaning of “Mandatory” in Matrimonial Context

The term “mandatory” may raise concern, especially where issues of domestic violence or power imbalance exist. Therefore, clarity is essential. In a matrimonial setting, mandatory mediation should mean:

- Compulsory attendance at an initial mediation session;
- Time-bound participation in good faith;
- Freedom to exit the process if settlement is not possible.

A well-designed model must also include screening for domestic violence, exemptions for urgent relief, trained mediators, and judicial oversight. The process must protect safety and autonomy.

E. Normative Justification

There are three main reasons for considering mandatory mediation in matrimonial disputes.

First, early dialogue may prevent escalation. Once litigation intensifies, parties adopt rigid positions.

Second, matrimonial disputes involve broader social interests, particularly child welfare and family stability.

Third, the current discretionary system leads to inconsistent practice across courts.

¹⁴ Code of Civil Procedure, 1908, § 89 (India).

In sum, mediation in matrimonial disputes rests on the relational nature of family conflict and the limits of adversarial adjudication. Properly designed mandatory mediation does not undermine access to justice. Instead, it creates a procedural gateway that prioritizes dialogue and negotiated resolution before full adversarial trial.

3. Judicial Encouragement of Mediation in Indian Matrimonial Law

Over the last two decades, the Indian judiciary has gradually shifted from a purely adversarial approach in matrimonial disputes toward a settlement-oriented and mediation-friendly framework. Although mediation is not uniformly mandatory in matrimonial matters, the Supreme Court's jurisprudence reflects a consistent preference for reconciliation, structured dialogue, and early resolution. This shift is based on the understanding that matrimonial disputes often arise from emotional breakdown rather than criminal intent, and that prolonged litigation can intensify hostility and harm children.

3.1 Early Concern: Criminalization of Marital Discord

In *G.V. Rao v. L.H.V. Prasad*, the Supreme Court expressed concern over the growing tendency of matrimonial disputes to escalate into criminal proceedings against not only spouses but also extended family members (*G.V. Rao v. L.H.V. Prasad*, 2000).¹⁵ The Court observed that minor disagreements between husband and wife often take serious legal form and result in multiple criminal cases. It cautioned that such litigation may destroy the possibility of reconciliation and consume important years of the parties' lives.

Although mediation was not expressly directed, the Court acknowledged that matrimonial disputes differ from ordinary criminal offences. The judgment marked an early recognition that adversarial prosecution may not always serve the long-term interests of justice in marital conflicts.

3.2 Settlement in Criminal Matrimonial Cases

A significant development occurred in *B.S. Joshi v. State of Haryana*, where the Supreme Court examined whether criminal proceedings under Sections 498-A and 406 of the Indian Penal Code could be quashed when the parties had settled their dispute (*B.S. Joshi v. State of Haryana*, 2003).¹⁶ These offences are non-compoundable under Section 320 of the Code of Criminal Procedure.

¹⁵ *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 (India).

¹⁶ *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675 (India).

However, the Court held that the High Court could exercise its inherent powers under Section 482 CrPC to quash proceedings in order to secure the ends of justice.¹⁷

The Court clarified that quashing after settlement is different from formal compounding. It emphasized that encouraging genuine settlement in matrimonial disputes prevents abuse of the legal process. This judgment recognized the personal nature of many matrimonial offences and accepted that once disputes are resolved, continuing criminal prosecution may be unnecessary.

This reasoning was further clarified in *Gian Singh v. State of Punjab* (2012).¹⁸ The Court held that criminal cases arising from matrimonial disputes may be quashed upon genuine settlement, especially where the dispute has a “civil flavor.” It distinguished such cases from serious crimes affecting society at large. This decision strengthened judicial support for negotiated settlement in matrimonial matters.

3.3 Structured Judicial Directions on Mediation

A more direct endorsement of mediation appeared in *K. Srinivas Rao v. D.A. Deepa* (2013).¹⁹ In this case, the Court observed that early counselling or mediation might have prevented the escalation of matrimonial discord into multiple legal proceedings. Importantly, the Court issued specific directions:

1. Family Courts should make earnest efforts to settle matrimonial disputes through mediation.
2. Even in cases under Section 498-A IPC, courts may refer parties to mediation where settlement is possible.
3. Mediation centers should establish pre-litigation desks and promote early dispute resolution.

These directions demonstrate a shift from general encouragement to structured institutional support. The Court recognized mediation as a preventive tool that can stop minor disagreements from turning into long-term adversarial battles.

3.4 Child-Centric Jurisprudence

¹⁷ Code of Criminal Procedure, 1973, §§ 320, 482 (India).

¹⁸ *Gian Singh v. State of Punjab*, (2012) 10 SCC 303 (India).

¹⁹ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 (India).

The Supreme Court's pro-settlement approach is particularly visible in child custody matters. In *Gaurav Nagpal v. Sumedha Nagpal* (2009), the Court reaffirmed that the welfare of the child is the paramount consideration in custody disputes.²⁰ It noted that parental ego and prolonged litigation can negatively affect a child's psychological development.

Although the Court did not mandate mediation, it encouraged conciliation and efforts to reduce hostility between parents. The reasoning supports mediation as a process that promotes cooperative parenting and focuses on the future welfare of the child rather than past blame.

3.5 Judicial Trajectory and Policy Orientation

Taken together, these decisions reveal a clear judicial trajectory. First, the Court recognized the harmful effects of adversarial matrimonial litigation. Second, it permitted settlement even in non-compoundable criminal cases to prevent misuse of process. Third, it directed courts to actively promote mediation and pre-litigation settlement. Fourth, it emphasized child welfare and conciliation in custody disputes.

The judiciary has thus moved from accepting settlement as permissible to encouraging mediation as a systemic response to matrimonial conflict. The emphasis has not been limited to reducing court backlog. Rather, the dominant concern has been preservation of relationships, prevention of escalation, and protection of children.

3.6 Implications for Legislative Reform

Despite strong judicial encouragement, mediation in matrimonial disputes remains largely discretionary. Referral depends on the individual judge and available infrastructure. There is no uniform statutory mandate requiring early mediation in defined categories of matrimonial disputes. Supreme Court jurisprudence has created a normative foundation for reform. The consistent emphasis on early intervention, settlement before escalation, and protection of children indicates that mediation aligns with constitutional values of dignity and justice.

The central question is therefore not whether mediation is desirable. The courts have repeatedly affirmed its importance. The unresolved issue is whether Parliament should convert this judicial preference into a structured statutory framework. Judicial encouragement has prepared the ground.

²⁰ *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 (India).

Legislative design must now determine whether mediation in matrimonial disputes should remain discretionary or become a carefully regulated procedural requirement.

4. Existing Legislative Framework and Its Limitations

Although Indian courts have consistently encouraged mediation in matrimonial disputes, the legislative framework remains fragmented and largely discretionary. Several statutes promote settlement and conciliation, but none creates a structured and mandatory mediation model specifically designed for matrimonial disputes. This section examines the main statutory provisions and highlights their limitations.

4.1 Section 89 of the Code of Civil Procedure, 1908

Section 89 of the Code of Civil Procedure, 1908 (CPC) was introduced to promote alternative dispute resolution, including mediation.²¹ It empowers civil courts to refer disputes to mediation where elements of settlement appear to exist.

In *Salem Advocate Bar Association (II) v. Union of India*, the Supreme Court clarified that courts must consider ADR where appropriate, but actual referral depends on judicial discretion.²² Later, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, the Court classified disputes suitable and unsuitable for ADR.²³

While Section 89 provides statutory recognition to mediation, it has important limitations in matrimonial matters. First, referral is entirely dependent on the judge's satisfaction. There is no automatic or pre-litigation requirement. Second, referral often occurs after pleadings are completed, when hostility has already intensified. Third, the provision applies generally to civil disputes and does not include family-specific safeguards such as screening for domestic violence or power imbalance.

Thus, Section 89 legitimizes mediation but does not establish a structured family-focused framework.

4.2 The Family Courts Act, 1984

²¹ Code of Civil Procedure, 1908, § 89 (India).

²² *Salem Advocate Bar Association (II) v. Union of India*, (2005) 6 SCC 344 (India).

²³ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

The Family Courts Act, 1984 represents a more targeted effort to promote settlement in family disputes. Section 9 states that family courts “shall make efforts” for settlement before proceeding with trial.²⁴ This language reflects a clear policy preference for reconciliation.

Family courts are also empowered to seek assistance from counsellors and welfare experts. The Act aims to create a less formal and more conciliatory environment compared to ordinary civil courts.

However, significant gaps remain. Section 9 does not prescribe a uniform procedure, timeline, or mandatory format for mediation. The effort at settlement usually occurs after the case is filed. There is no requirement for pre-litigation mediation. Moreover, implementation varies across jurisdictions depending on available infrastructure and trained personnel.

Therefore, while the Act encourages mediation, it does not institutionalize it as a compulsory first step.

4.3 Reconciliation under Personal Laws

Personal law statutes also promote reconciliation. For example, Section 23(2) of the Hindu Marriage Act, 1955 requires courts to attempt reconciliation before granting relief in certain matrimonial cases.²⁵

These provisions reflect legislative recognition that marriage should not be dissolved without exploring settlement. However, in practice, reconciliation efforts are often brief and informal. Judges usually conduct these efforts without structured mediation techniques or professional facilitators. The statutes do not prescribe detailed procedures or timelines.

As a result, reconciliation under personal laws tends to be symbolic rather than systematic.

4.4 The Mediation Act, 2023

The Mediation Act, 2023 is a major development in India’s ADR framework.²⁶ It provides statutory recognition to mediation, sets standards for mediators, and recognizes pre-litigation mediation. It also strengthens enforceability of mediated settlement agreements.

However, the Act is general in nature. It applies broadly to civil and commercial disputes and does not create a dedicated framework for matrimonial matters. Pre-litigation mediation under the Act

²⁴ Family Courts Act, 1984, § 9 (India).

²⁵ Hindu Marriage Act, 1955, § 23(2) (India).

²⁶ Mediation Act, 2023 (India).

is generally voluntary unless made mandatory by another statute. The Act also does not provide detailed family-specific safeguards, such as mandatory screening for domestic violence or child-sensitive procedures.

Therefore, although the Mediation Act improves the overall legal status of mediation, it does not independently establish mandatory mediation for matrimonial disputes.

4.5 Comparative Insight: Section 12A of the Commercial Courts Act

Section 12A of the Commercial Courts Act, 2015 introduced mandatory pre-institution mediation for specified commercial disputes where urgent relief is not sought.²⁷ In *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, the Supreme Court held that compliance with Section 12A is mandatory and that suits filed without pre-institution mediation are liable to rejection.²⁸

This provision demonstrates that Parliament can create binding mediation requirements with procedural consequences. It shows that mandatory pre-litigation mediation is constitutionally valid when clearly designed. However, commercial disputes differ from matrimonial disputes. Commercial matters are primarily financial and often involve parties with relatively equal bargaining power.

The absence of a similar structured requirement in matrimonial law highlights a legislative gap rather than a constitutional limitation.

4.6 Structural Gaps

The current framework reveals several systemic weaknesses:

- Mediation provisions are scattered across different statutes.
- Referral remains discretionary rather than mandatory.
- Early intervention is rare; mediation usually begins after litigation starts.
- Implementation varies across states.
- Infrastructure and specialized family mediators are unevenly available.

The central limitation is that statutes encourage mediation but do not design a comprehensive, family-specific mandatory model. There is no clear definition of categories suitable for compulsory mediation, no uniform screening standards, no time-bound structure, and no procedural consequence for non-participation.

²⁷ Commercial Courts Act, 2015, § 12A (India).

²⁸ *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

Indian law reflects a policy preference for settlement in matrimonial disputes, but this preference has not yet been translated into a structured legislative framework. The gap lies not in judicial intent but in statutory design.

5. Mandatory Mediation in Other Legal Domains: Lessons for Family Law

The question of mandatory mediation in matrimonial disputes must be examined in light of experiences from other legal domains. India has already introduced compulsory mediation in commercial law, and several countries have structured mandatory processes in family law. These models offer practical and constitutional guidance for designing reform in India.

5.1 Indian Commercial Law

Section 12A of the Commercial Courts Act, 2015 introduced mandatory pre-institution mediation for specified commercial disputes where urgent interim relief is not sought.²⁹ A suit filed without exhausting this requirement is liable to rejection.

In *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, the Supreme Court held that Section 12A is mandatory and that compliance is a condition precedent to filing a suit.³⁰ The Court clarified that such a requirement does not violate access to justice because it structures the litigation pathway rather than denying judicial remedies.

This model demonstrates important features: clear statutory language, pre-litigation timing, exemption for urgent relief, institutional mediation mechanisms, and time-bound procedure. Although commercial disputes differ from matrimonial disputes, this framework proves that Parliament can design binding mediation requirements with procedural consequences. It also shows that mandatory mediation can coexist with constitutional protections.

However, matrimonial disputes involve emotional vulnerability and child welfare concerns. Therefore, while structural clarity can be borrowed, the design must be more sensitive.

5.2 Australia: Family Dispute Resolution

Australia provides one of the most developed examples of mandatory family mediation. Under Section 60I of the Family Law Act 1975, parties must attend Family Dispute Resolution (FDR)

²⁹ Commercial Courts Act, 2015, § 12A (India).

³⁰ *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

before filing applications for parenting orders.³¹ A certificate from an accredited practitioner is required before approaching the court.

Exceptions apply in cases involving family violence, child abuse, urgency, or inability to participate. Practitioners must screen parties for safety risks before mediation begins.

The Australian model reflects several safeguards: participation in the process is mandatory, but settlement is voluntary; screening for domestic violence is compulsory; mediators must be accredited; and the focus remains child-centered. Courts have not treated this requirement as unconstitutional because judicial access remains available after the mediation attempt.

This model illustrates how early intervention, structured screening, and professional standards can support mandatory mediation in family law.

5.3 United Kingdom

In the United Kingdom, the Children and Families Act 2014 requires parties to attend a Mediation Information and Assessment Meeting (MIAM) before initiating certain family proceedings.³² The MIAM is designed to inform parties about mediation and assess suitability.

Exemptions exist for domestic violence, urgency, and child protection concerns. The requirement is limited to attending an initial meeting rather than full mediation. This approach balances structured encouragement with party autonomy.

The UK experience demonstrates that even limited compulsory orientation sessions can increase mediation uptake without infringing rights.

5.4 United States

In the United States, family mediation practices vary by state, but many jurisdictions require court-connected mediation in custody and visitation disputes before trial.³³ Screening for domestic violence is common, and courts review mediated agreements before approval.

The American experience shows that mandatory mediation in parenting disputes is widely accepted and can function alongside judicial supervision. It also highlights the importance of confidentiality and safety screening.

5.5 Key Lessons for India

³¹ Family Law Act 1975 (Cth) s 60I (Austl.).

³² Children and Families Act 2014, c. 6, § 10 (U.K.).

³³ See, e.g., Cal. Fam. Code § 3170 (West) (U.S.).

Comparative models reveal several consistent principles. First, mandatory mediation refers to compulsory participation in process, not compulsory settlement. Second, early intervention is crucial. Third, clear exemptions for domestic violence and urgent cases are essential. Fourth, professional accreditation and training of mediators ensure quality. Fifth, judicial oversight safeguards fairness and voluntariness.

At the same time, India must avoid mechanical transplantation. Its plural personal law system, uneven infrastructure, and social realities require a context-sensitive design. Mandatory mediation in matrimonial disputes must prioritize dignity, safety, and child welfare rather than efficiency alone.

Experiences from commercial law in India and family law abroad demonstrate that structured mandatory mediation is neither unconstitutional nor impractical. When supported by clear statutory language, defined exemptions, professional standards, and judicial supervision, it can reduce litigation and promote cooperative resolution. These lessons provide a foundation for designing a calibrated and family-sensitive mediation framework in India.

6. Concerns and Critiques of Mandatory Mediation in Matrimonial Disputes

Mandatory mediation in matrimonial disputes promises efficiency and reconciliation, but it also raises serious concerns. Matrimonial conflicts often involve emotional vulnerability, financial dependency, and unequal power relations. If mediation is made compulsory without safeguards, it may harm rather than protect vulnerable parties. This section examines the major critiques.

6.1 Domestic Violence and Coercion

The strongest objection relates to domestic violence. Where one spouse has faced physical, emotional, or economic abuse, compulsory mediation may expose the victim to further pressure. The Protection of Women from Domestic Violence Act, 2005 recognizes the need for immediate and effective remedies in such cases.³⁴

In abusive relationships, mediation can create risks. Victims may feel intimidated during joint sessions, may agree to unfair terms due to fear, or may be unable to negotiate freely. Scholars have warned that mediation may mask power imbalance in cases involving coercive control.³⁵

³⁴ Protection of Women from Domestic Violence Act, 2005 (India).

³⁵ Menkel-Meadow, C. (1984). Toward another view of legal negotiation: The structure of problem solving. *UCLA Law Review*, 31, 754–842.

Indian courts have also recognized the seriousness of matrimonial offences and the need to distinguish genuine cases from misuse.³⁶ However, this does not reduce the importance of protecting real victims. Therefore, any mandatory mediation model must provide clear exclusions for cases involving credible allegations of violence, serious cruelty, or safety risks. Screening at the initial stage is essential.

6.2 Power Imbalance and Structural Inequality

Even where physical violence is absent, power imbalance may exist. Financial dependence, unequal education, social conditioning, or control over children may weaken one spouse's bargaining position. Mediation assumes voluntary and informed participation, but unequal relationships may distort negotiation outcomes.

A financially stronger spouse may influence maintenance terms. Emotional manipulation may affect decision-making. Critics argue that mandatory mediation may legitimize unequal bargaining if safeguards are absent.³⁷

To address this, mediation frameworks must allow separate sessions, ensure access to independent legal advice, and require judicial review of settlement agreements. Mediators must be trained to identify subtle coercion and imbalance. Without such protections, mediation risks formalizing injustice.

6.3 Access to Justice and Constitutional Concerns

Another critique is that mandatory mediation may restrict access to courts under Article 21 of the Constitution. Requiring mediation before filing a case may appear to create procedural barriers. However, the Supreme Court has upheld mandatory pre-institution mediation in commercial disputes under Section 12A of the Commercial Courts Act, 2015, provided the process is reasonable and time-bound (*Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, 2022).³⁸ This suggests that structured procedural requirements do not automatically violate access to justice.

³⁶ Gian Singh v. State of Punjab, (2012) 10 SCC 303 (India).

³⁷ Menkel-Meadow, C. (1984). Toward another view of legal negotiation: The structure of problem solving. *UCLA Law Review*, 31, 754–842.

³⁸ Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1 (India).

The constitutional concern arises only if mediation causes undue delay, imposes excessive burden, or lacks exemption for urgent relief. Therefore, the problem lies not in mediation itself but in poorly designed compulsion.

6.4 Delay and Infrastructure

There is also concern that mandatory mediation may add delay in an already burdened system. In disputes involving urgent maintenance or child custody, delay can cause real hardship.

Strict timelines, adequate infrastructure, and exemption for urgent interim relief are necessary to prevent mediation from becoming an obstacle. Mediation must function as early intervention, not as an additional procedural layer.

6.5 Confidentiality and Cultural Pressures

Mediation is confidential. While confidentiality promotes open discussion, critics argue it may conceal coercion. Clear statutory guidance on mediator duties in cases of abuse can balance privacy and protection.

In India, social and family pressures may also influence settlement. Mediation must not be framed as forced reconciliation. It should remain a neutral space for exploring solutions, including dignified separation.

6.6 Professional Standards

Family mediation requires specialized skills in psychology, child welfare, and trauma awareness. The Mediation Act, 2023 establishes general standards,³⁹ but matrimonial mediation demands additional training. Without professional competence, mandatory mediation may produce harmful outcomes.

Therefore, concerns regarding domestic violence, power imbalance, access to justice, delay, and professional quality are serious. However, they do not make mandatory mediation inherently unjust. They highlight the need for clear exclusions, screening mechanisms, judicial oversight, and trained mediators. With proper safeguards, mandatory mediation can operate as a protective and restorative process rather than a coercive one.

7. Bridging the Gap: Designing a Legislative Framework for Mandatory Mediation

³⁹ Mediation Act, 2023 (India).

The earlier analysis shows that Indian courts strongly support mediation in matrimonial disputes, yet the statutory framework remains largely discretionary. The need is therefore not to justify mediation, but to design a structured legislative model that institutionalizes early dialogue while protecting safety, autonomy, and access to justice. Reform must be principled and not coercive. Any framework for mandatory mediation in matrimonial disputes should rest on certain core principles. First, participation in the process may be compulsory, but settlement must always remain voluntary. Second, safety must be prioritized. Cases involving domestic violence, serious cruelty, or immediate risk must be excluded or screened carefully under the Protection of Women from Domestic Violence Act, 2005.⁴⁰ Third, mediation should occur at the earliest stage, preferably before litigation begins, to prevent adversarial escalation. Fourth, in custody matters, the welfare of the child must guide procedural design. Fifth, courts must retain supervisory power to ensure fairness and voluntariness.

A legislative model may introduce mandatory pre-litigation mediation similar in structure to Section 12A of the Commercial Courts Act, 2015, which the Supreme Court upheld as mandatory in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022).⁴¹ Parties intending to file matrimonial petitions could be required to first approach an accredited mediation center and obtain a certificate of participation. Filing without such certificate may render the petition defective, unless an exemption applies. However, unlike commercial disputes, matrimonial mediation must begin with safety screening before joint sessions are held.

The scope of mandatory mediation should be clearly defined. It may apply to divorce on non-violent grounds, judicial separation, restitution of conjugal rights, maintenance disputes without urgent relief, property distribution between spouses, and custody disputes subject to screening. It should not apply to cases involving credible allegations of violence, sexual offences, or immediate child safety risks. Clear exclusions prevent misuse and protect vulnerable parties.

Screening must be a statutory requirement. Individual intake sessions should assess domestic violence, coercion, mental health concerns, and imbalance of power. Where risk is identified, the mediator should issue an exemption certificate and the matter should proceed directly to court. Safety must take precedence over settlement.

⁴⁰ Protection of Women from Domestic Violence Act, 2005 (India).

⁴¹ *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

The process should be time-bound, ideally completed within sixty to ninety days, with provision for early termination if settlement is unlikely. Urgent interim relief in matters of maintenance or child welfare must remain available. Mandatory mediation should function as early intervention, not as procedural delay.

Meaningful participation also requires informed consent. Parties should have access to independent legal advice before signing any settlement agreement. Courts should review mediated settlements to ensure voluntariness and fairness. Judicial oversight strengthens legitimacy and protects weaker parties.

Professional competence is equally important. The Mediation Act, 2023 establishes a general framework for accreditation,⁴² but matrimonial mediation requires specialized training in family dynamics, trauma awareness, and child psychology. Dedicated mediation centers within family courts and adequate infrastructure are necessary to prevent inefficiency.

Legislative reform may be achieved through amendment to the Family Courts Act, 1984,⁴³ or by inserting a dedicated chapter on family mediation within the Mediation Act. The objective is not to restrict access to courts but to structure the pathway toward resolution. When designed with exclusions, screening, timelines, and judicial supervision, mandatory mediation can bridge the gap between judicial encouragement and legislative clarity while remaining consistent with constitutional values.

8. The Role of Mandatory Mediation in Peace Building and Family Justice

Matrimonial disputes are not only private disagreements between spouses. They affect children, extended families, and social stability. When marital breakdown results in prolonged litigation, the effects include emotional harm, financial insecurity, and long-term hostility. In this setting, mandatory mediation, if carefully designed, can serve as a peace-building mechanism within the family justice system.

Traditional adjudication determines legal rights and liabilities. It is necessary in many cases, especially where protection is required. However, court decisions often address only legal claims and not the emotional causes of conflict. Mediation offers a different model. It provides a structured setting for dialogue, acknowledgment, and negotiated settlement. In matrimonial

⁴² Mediation Act, 2023 (India).

⁴³ Family Courts Act, 1984 (India).

disputes, parties often seek closure, clarity about parenting responsibilities, and financial stability rather than merely a legal declaration. Early mediation can shift the focus from blame to problem-solving and future planning.

Indian courts have repeatedly emphasized the welfare of the child as the paramount consideration in custody disputes. In *Gaurav Nagpal v. Sumedha Nagpal* (2009), the Supreme Court observed that children are often the silent sufferers in parental conflict.⁴⁴ Prolonged adversarial proceedings may expose them to divided loyalties and psychological stress. A structured mediation process can help parents develop cooperative parenting plans and reduce hostility. By encouraging discussion about residence, visitation, education, and support, mediation supports long-term child welfare.

Mandatory mediation can also reduce adversarial escalation. Matrimonial pleadings frequently contain detailed allegations of cruelty or misconduct. Cross-examination may deepen emotional wounds. When dialogue occurs at an early stage, before positions become rigid, parties may be more open to compromise. Even where full settlement is not achieved, mediation may narrow issues and improve communication. Former spouses who resolve disputes cooperatively are more likely to maintain functional interaction, which is crucial when children remain involved.

From an access to justice perspective, meaningful justice is not limited to the right to file a case. It includes access to timely and effective resolution. Family litigation can be financially and emotionally burdensome. Time-bound mandatory mediation may provide faster settlements and reduce legal costs. Even if mediation fails, it can clarify contested issues and make adjudication more focused. In this sense, mediation complements rather than replaces court processes.

Institutional efficiency is another consideration. Family courts in India handle multiple cases arising from the same marital breakdown, including divorce, maintenance, custody, and domestic violence proceedings. Experience under Section 12A of the Commercial Courts Act, 2015 shows that structured pre-litigation mediation can reduce case inflow when designed clearly and upheld by the Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022).⁴⁵ Although family disputes are different, early structured mediation may similarly reduce unnecessary trials and repeated interim applications.

⁴⁴ *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 (India).

⁴⁵ *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

At the constitutional level, mediation aligns with Article 21, which protects dignity and fair procedure.⁴⁶ A process that promotes respectful dialogue and participatory resolution reflects these values. However, mediation must not be romanticized. It is unsuitable in cases involving violence or coercion. Proper screening, professional mediators, judicial supervision, and clear exclusions are essential safeguards.

In conclusion, mandatory mediation, when carefully structured, can function as a peace-building instrument in family justice. It reduces hostility, protects child welfare, promotes dignified separation where necessary, and supports institutional efficiency. Its value lies not in replacing courts, but in creating a structured pathway toward humane and sustainable resolution.

9. Conclusion

This paper has examined the growing importance of mediation in matrimonial disputes in India and the clear gap between judicial encouragement and legislative design. Over the past two decades, the Supreme Court has repeatedly emphasized reconciliation, early intervention, and settlement in family matters. Courts have recognized that matrimonial disputes often arise from emotional breakdown rather than criminal intent, and that prolonged adversarial litigation can deepen hostility and harm children. Yet, despite this strong judicial support, mediation remains largely discretionary under existing statutes.

Current laws such as the Code of Civil Procedure, the Family Courts Act, and the Mediation Act, 2023 promote settlement but do not create a structured and family-specific mandatory framework. In contrast, commercial law demonstrates that Parliament can design binding pre-litigation mediation where policy demands it. The absence of a similar model in matrimonial law reflects a legislative gap rather than a constitutional barrier.

Comparative experiences show that mandatory mediation in family disputes is workable when properly designed. Participation in the process may be required, but settlement must remain voluntary. Clear exclusions for domestic violence, safety screening, trained mediators, and judicial oversight are essential safeguards.

Reform must therefore be careful and principled. The goal is not forced reconciliation but structured dialogue before adversarial escalation. A calibrated system of mandatory pre-litigation

⁴⁶ Constitution of India, art. 21.

mediation in defined categories of matrimonial disputes can reduce unnecessary conflict, protect child welfare, and improve judicial efficiency.

In conclusion, mandatory mediation should be understood as procedural reform, not coercion. By aligning legislative design with judicial wisdom, India can strengthen its family justice system and promote humane, timely, and dignified resolution of matrimonial disputes.

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